law, has often been cited as authority for the proposition that if such a right exists it dies with the person. It is not absolutely clear from the opinion in the case at bar whether the court based its decision on the ground of a violation of the right of privacy, or on the ground of breach of contract. Certainly under the facts of the case the latter ground would have sufficed to support the decision (*Moore* v. *Rugg,* 44 Minn. 28, 46 N. W. 141) and that it was at least partially relied upon may be inferred from the importance which the court apparently attached to the case of *Pollard* v. *Photographic Co.* L. R. 40 Ch. Div. 345, which was decided on the ground of breach of contract. And certainly, if in any case one has a property right in his photograph, he had such under the facts of this case, where he hired the photographer to take this particular picture for him. However, from the language of the court, one is led to feel in coming to a decision they had strongly in mind the right of privacy. And if the case is considered to have been based on the violation of the right of privacy, the allowing of an action by one who was not the subject of the photograph marks another advance in the evolution of this comparatively new doctrine of the law.

SALES—FUNGIBLE GOODS—PASSING TITLE TO PART OF MASS WITHOUT SEPARATION.—Defendant ordered from plaintiff fifty cases of a particular brand of wine, both parties intending title to pass, but no specific cases were ever set aside as defendant's although more than the requisite number were in the plaintiff's cellar. Defendant later refusing to accept the wine, plaintiff sued for the price of goods bargained and sold. *Held,* that title to the wine had passed. *Gourd* v. *Healy,* (N. Y. 1912), 99 N. E. 1099.

The weight of authority is that title may be passed to a given amount of fungible goods without any separation from a larger mass containing it. *Kimberly* v. *Patchin,* 19 N. Y. 330; *Hutchinson* v. *Commonwealth,* 82 Pa. 472; *Chapman* v. *Shepard,* 39 Conn. 413; *Hires* v. *Hurff,* 40 N. J. L. 581; *Seldomridge* v. *Bank,* 87 Neb. 531; *Young* v. *Miles,* 20 Wis. 646; *Kingman* v. *Holmquist,* 36 Kan. 735; *Cloke* v. *Shafroth,* 137 Ill. 399; *Mackellar* v. *Pillsbury,* 48 Minn. 396; *Waldron* v. *Chase,* 37 Me. 414 (cf. 85 Me. 500); WILLISTON, SALES, § 156, and note in 26 L. R. A. (N. S.) 57. These cases contend that the parties ought to be, and are, able to pass title as above stated. *Contra,* that it is impossible for the parties to pass title under such circumstances, see *Mercer Nat. Bank* v. *Hawkins,* 104 Ky. 171; *Keeler* v. *Goodwin,* 111 Mass. 490; *Jeraulds* v. *Brown,* 64 N. H. 606; *Walder* v. *Belcher,* 33 N. C. 609; *Commercial Nat. Bank* v. *Gillette,* 90 Ind. 268; The last case agrees that the title cannot pass unless the goods are specified, and defends the rule on the ground that it discourages speculative sales and protects purchasers and creditors. The SALES ACT, § 6, ¶ 2, provides that title to fungible goods shall pass if such is the intent, and that the parties shall become tenants in common. The introductory part of the act defines fungible goods as those "any unit of which is from its nature or from mercantile usage equivalent to any other unit." As to particular classes of goods, see WILLISTON, SALES, § 159, and the note in L. R. A. (N. S.) cited above. It may be doubted whether cases of bottled wine should be considered fungible goods.